

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B06
PLR-130624-08
Date:
January 23, 2009

Re:

FY:

Legend

- Taxpayer =
- Parent =
- CPA Firm =
- Product =
- Year 1 =
- Month 1 =
- Date 1 =
- Date 2 =
- Date 3 =

Dear :

This responds to a letter dated June 25, 2008, supplemented by a letter dated September 2, 2008, submitted by CPA Firm on behalf of Taxpayer. The correspondence requests that the Internal Revenue Service (Service) grant an extension of time under Treas. Reg. § 301.9100-3 to file a Form 4876-A, "Election to be Treated as an Interest Charge DISC," for Year 1.

The extension granted by this letter is based on facts and representations submitted by Taxpayer and representatives of CPA Firm, and accompanied by a penalty of perjury statement executed by the appropriate parties. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Facts

Taxpayer was organized on Date 1 to operate as an exporter of Products. Taxpayer and Parent engaged CPA Firm to establish Taxpayer as an interest charge domestic international sales corporation (IC-DISC) pursuant to Internal Revenue Code of 1986, as amended (Code), §§ 991 through 997. Taxpayer's management was not sophisticated in tax matters and expected CPA Firm to take all steps necessary to elect IC-DISC status for Year 1, Taxpayer's first taxable year. Believing all the requirements to conduct business and be treated as an IC-DISC for its first taxable year were satisfied, Taxpayer began operating as an IC-DISC as of the date of its organization.

Even though Taxpayer assumed that the necessary requirements to conduct business as an IC-DISC were satisfied, it did not qualify as an IC-DISC for federal income tax purposes because Form 4876-A was not timely filed with the IRS within 90 days of Date 1. During Month 1, CPA Firm reviewed the completed Form 4876-A and realized that the form had not been filed. CPA Firm attempted to file the form on Date 2, more than 90 days after Date 1. On Date 3, Taxpayer received a notice from the Service disallowing the election because it was not timely filed. In response, CPA Firm, acting on Taxpayer's behalf, submitted this letter ruling request.

Law and Analysis

Section 992(b)(1)(A) of the Code provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as the Secretary may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing DISC status must file Form 4876-A. A corporation electing to be treated as a FSC, small FSC, or DISC for its first taxable year shall make its election within 90 days after the beginning of that year. The rules contained in Treas. Reg. § 1.992-2(a)(1), (b)(1), and (b)(3) shall apply to the manner of making the election and the manner and form of representing shareholder consent to the election.

Treasury Regulation § 1.992-2(a)(1)(i) provides that except as provided in paragraphs

(b)(3) and (c) of that section, the election to be treated as a DISC shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876 when filed with the service center.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Taxpayer requests an extension of time to make the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) for its first taxable year. This is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A and the shareholder consent statements required under Treas. Reg. §§ 1.921-1T(b)(1) and 1.992-2(a)(1)(i). Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

Caveats

The granting of an extension of time to make the election is not a determination that Taxpayer is otherwise eligible to make the election, to submit shareholder consent statements, or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this ruling letter should be associated with the election and shareholder consent statements.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

John E. Hinding
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel
(International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: